

**TOWN COUNCIL OF LEO-CEDARVILLE
MEETING MINUTES
SEPTEMBER 10, 2013**

The town council of Leo-Cedarville met in regular session on September 10, 2013 at 7:00 PM at the Town Hall of Leo-Cedarville, located at 13909 Pony Express Run, Leo, IN 46765.

ATTENDANCE: In attendance were John Clendenen, president; Tim Richards, vice president; Paul Steffens, Ted Garton and Kevin Veatch, council members; Peggy Garton, town manager; and John Eastes, clerk-treasurer. Town attorney Pat Proctor of Eilbacher Fletcher, LLP was present for a portion of the meeting as noted below.

Mr. Clendenen called the meeting to order and led attendees in the “Pledge of Allegiance.”

AGENDA: Mr. Veatch moved to accept the agenda with flexibility and Mr. Richards provided a second to the motion, which passed by unanimous voice vote.

MINUTES: Without objection, council members approved the minutes of August 27, 2013 as distributed.

REPORT of the TOWN MANAGER: Mrs. Garton presented the following, with action as noted therein:

- **Comprehensive Plan Update:** The Town of Leo-Cedarville and RATIO Architects, Inc. will conduct a second open house forum to gather feedback from residents regarding the “first draft” of the town’s new “Envision Comprehensive Plan.” The meeting has been scheduled for September 12, 2013 from 6-8 p.m. at Leo-Cedarville’s Park Pavilion, located at 9825 St. Joseph Street, Leo, Indiana.
- **2013 Road Projects:** API Construction Corporation is expected to begin work on the \$154,946.73 public works’ project known as “Street Improvements—2013.” A 9:00 a.m. September 13 pre-construction meeting is scheduled at the town hall with representatives of API Construction Corporation.
- **2013 Old Downtown Leo Storm Water Project:** An update on the \$219,128.00 old Leo storm water construction project was provided, with completion of the project slated to occur pending completion of construction area repaving.
- **2013 Riverside Gardens’ Construction Project:** Construction meetings with associates from Martin Riley architects and W. A. Sheets and Sons, Inc. are conducted on a biweekly basis. Site development for the splash pad and pond are in-process as well as preparation for a new maintenance building that has been relocated near the mesic garden area of the park. Work on the entire construction project may be completed as early as mid-November.

- **Parks' Projects and Activities:** On September 28, Cedarville Park will host the town's annual fall festival from 2-5 p.m. and the Leo-Cedarville Chamber of Commerce will sponsor its first juried art show from 10 a.m. to 5 p.m. at Riverside Gardens' Park.
- **Employee Wage Recommendations:** 2014 wage recommendations for hourly employees remained tabled until Council meets again on September 24, 2013.
- **Indiana Certified Public Manager® Training Program:** Mrs. Garton requested support for her enrollment to attend the second term of the Indiana Certified Public Manager® training program offered by Ball State University, beginning monthly in January 2014.
 - **Action:** President Clendenen moved to approve \$1,695.00 to pay for enrollment fees for Mrs. Garton to enroll in and attend the 2014 Indiana Certified Public Manager® training program to be offered by Ball State University, beginning monthly in January 2014. Mr. Veatch provided a second to the motion, which passed by unanimous voice vote.
- **Standard Operating Procedures:** Council members were provided with a copy of a Supervisor's Standard Operating Procedures for Employee Evaluation" form on August 27, 2013. Further discussion of standard operating procedures remained tabled.
- **Fall Leaf Pickup Schedule:** The October-December leaf-vacuum pickup schedule will be posted online at the town's website.
- **Unlimited Garbage Pickup:** Unlimited garbage pickup is scheduled for Saturday, September 14, 2013.
- **IACT Conference:** Mrs. Garton, Mr. Clendenen and Mr. Steffens are registered to attend the annual 2013 Indiana Association of Cities and Towns Conference that will be held in Indianapolis October 6-8. On October 9, Mrs. Garton will remain in Indianapolis to attend the Indiana Municipal Manager's Association Conference.

PRESIDENT CLENDENEN: Mr. Clendenen presented the following, with action as noted therein:

Water Utility Rate Hearing Process and Pioneer Water, LLC's Valuation: Mr. Proctor provided an update on the town's "Petition to Intervene," as filed before the IURC (Indiana Utility Regulatory Commission), regarding Pioneer Water, LLC's rate request. The OUCC (Office of Utility Consumer Counselor) is a branch of the IURC and is charged with representing consumers when the IURC receives a rate request application. Mr. Thomas (Ted) Nitza Jr., Dr. Maneesh Sharma and Mr. Chad Leggett, of FAVAC, LLP (Intelligent Analytical Solutions) and the OUCC have noted similarities in their independent findings of fact. FAVAC, LLP has prepared testimony to be submitted to the OUCC, with cross testimony due for filing on or before September 30, 2013 and the rate hearing to occur sometime in October.

As a matter of due diligence, FAVAC, LLP and Eilbacher Fletcher, LLP have been engaged to assist the town as it moves forward through the discovery process as referenced above.

President Clendenen believes the citizens of Leo-Cedarville are well represented by FAVAC, LLP and Eilbacher Fletcher, LLP and that legal work being done on behalf of the town pertaining to Pioneer Water, LLC's rate hearing and the determination of Pioneer Water, LLC's value is now beyond the scope of the town's current agreement with Eilbacher Fletcher, LLP. Therefore, additional billable hours are to be anticipated. President Clendenen asked Mr. Proctor to provide guidance as to potential fees for services rendered that may be beyond the scope of the existing agreement.

- **Town Manager Ordinance and Employee Evaluation Discussion:** On August 23, 2013, Councilman Veatch requested that Leo-Cedarville's attorney, Mr. Proctor, come before council for the purpose of discussing Ordinance 2011-04, hereafter referred to as the current town manager ordinance, as referenced in the distributed minutes' draft of August 13, 2013.

In the interest of full disclosure, Mr. Proctor stated that he had spoken with President Clendenen, Mr. Garton, Mr. Veatch and Mrs. Garton regarding individual perspectives held pertaining to the current town manager ordinance and the "HR" (Human Resources) function. Mr. Proctor stated that the office of town manager is set forth in the Indiana Code and distinguished between discussion topics that could be or are legal issues from those that deal with policy. The town manager is responsible for administrative duties as assigned by the legislative body, i.e., the town council, unless a written order or ordinance of the legislative body provides otherwise. Therefore, any change in the town manager's authority or executive function duties would require a modification to the existing town manager ordinance that created the position of town manager. Mr. Proctor stated that he has confidence in the current town manager and does not recommend changing the ordinance at this time. Mr. Proctor agrees with Mr. Veatch's position that the town council is responsible for the town manager and has to be in a position to review, oversee and evaluate the town manager's job performance.

Pertaining to the town's "HR" function, the employee evaluation process currently utilizes a modified copy of "Allen County's Human Resources Department Evaluation Form." Mr. Proctor believes that the town's legislative body, i.e., town council, is not in the best position to review day-to-day operations that are currently handled by the town manager. However, the town council may establish a level of review as it deems appropriate, as this is a matter of policy and not a legal issue.

Mr. Proctor provided legal counsel regarding actions that are deemed appropriate as part of an employee evaluation process, noting that discussion of an employee's evaluation may only occur by Council during an executive session. Individual council members may talk with employees and review employee evaluations but not photocopy or remove any document on file from within the town hall that pertains to an individual employee.

President Clendenen is not comfortable in setting goals and objectives for the town manager and believes that this is an action that should be accomplished collectively as a town council. President Clendenen expressed his desire to continue performing the town manager's evaluation on a one-to-one basis, as he has contact with the town manager on almost a daily basis. However, rather than continue the existing/past practice of having the town council

president perform an annual review of the town manager, Mr. Proctor recommended that Council meet in executive session to review the town manager's job performance and set goals for the position of town manager.

Mr. Veatch clarified that he does not wish to review employee evaluations for the purpose of determining the performance of an individual employee. Mr. Veatch desires to see the content of evaluations, as written by the town manager, to see if a progression in skill set has been occurring, as it has been almost two years since Council has reviewed said area of responsibility. Mr. Veatch followed by referencing two (2) prior instances pertaining to the "HR" function that required the involvement of Mr. Proctor. While Mr. Veatch believes the town manager is currently doing a good job, Mr. Veatch wants to ensure that Council exercises its responsibility, under statute, because he believes the current town manager ordinance does not restrict or eliminate Council's authority or responsibility for due diligence as it pertains to the area under discussion. President Clendenen indicated that council members may look at employee evaluations; President Clendenen has complete confidence in Mrs. Garton's evaluation practice and procedures.

Mr. Richards referenced a third instance pertaining to the "HR" function and agrees with and supports Mr. Veatch's position as stated. Mr. Richards wishes to understand the justification for asking for raises for town employees. In the immediate future, and with that in mind, Mr. Richards believes council members do need to review individual employee goals, objectives and reviews. Mr. Richards stressed that it has been his stated position since first becoming a council member that Council needs to get to the place of not just raising employees' wages because a certain amount of time has transpired. Mr. Richards believes that Council owes it to the citizenry and taxpayers of the town to review any justification for increasing an employee's wage. Mr. Richards indicated that he will contact the town manager to set an appointment for the purpose of reviewing written individual employee evaluations. By consensus, council members agreed that they will not review individual employee evaluations as a whole but will do so on an individual basis, if so desired.

Mr. Garton fully understands each council member's position and also is all about process and procedure, but Mr. Garton believes that Council, over the past year, has spent too much time debating topics that are encompassed within the area of human resources. Referencing the use of an outside consultant, legal services provided by Mr. Proctor and council members' expended time, Mr. Garton believes that Council has way outspent in time and financial resource the money under management regarding the human resource area under discussion. Mr. Garton agrees with Mr. Richards' statement that council members represent taxpayers of the town and believes that it is time to put procedures in place and get on with the business of the town. Mr. Garton believes there are far bigger issues that will require council members' attention, e.g., the comprehensive plan, water, sewer and the downtown area of Leo-Cedarville (old Leo).

Mr. Richards agrees with Mr. Garton's above-noted time and financial resource analysis. However, Mr. Richards also believes that a change in culture and employee behavior is needed and that setting standards for what employees should be doing, with measurable goals/objectives, will help improve employee performance. Mr. Veatch supports Mr.

Richards' position and believes that making appropriate culture changes in the workplace will help build the town's foundation for future anticipated growth. Mr. Veatch believes that improving the culture is a long-term investment and that having a competent "HR" process in place is important so that taxpayers are fully represented when growth occurs. Mr. Veatch also believes that resistance to changing the culture is the reason human resource topics have been ongoing over the past approximate year of time. Mr. Garton believes that the process and procedures under discussion are appropriate for large organizations but are not appropriate for the town of Leo-Cedarville because of its comparative size to larger organizations. Mr. Richards believes that the town has liability exposure similar to other organizations and believes that putting appropriate employee policies and procedures in place will help to protect the town.

- **Action:** Mr. Veatch moved that Council conduct an executive session to review the "HR" function and to provide guidance and/or direction to the town manager if needed. Mr. Richards provided a second to the motion. After further discussion, Mr. Veatch withdrew said motion, with the permission of his second, Mr. Richards. Mr. Veatch then moved that Council conduct an executive session to review the "HR" process and effectiveness of said process and for Council to provide input for the development of the town manager's performance evaluation. Mr. Garton provided a second to the motion, which passed by a 3-2 majority voice vote. Mr. Veatch, Mr. Steffens and Mr. Garton voted in support of the motion; Mr. Clendenen and Mr. Richards voted not to support the motion.
- **Executive Session:** President Clendenen scheduled a 30-minute executive session to precede Council's regular session as noted herein. The executive session will be held at 6:30 p.m. on September 24, 2013 only for the purpose of discussing job performance evaluations of employees of the Town and to review and discuss records classified as confidential by state and federal law, pursuant to I.C. 5-14-1.5-6.1.

Public notice will be given as required by I.C. 5-14-1.5-5.

- **Appraisal:** Council reached consensus to order a real estate property appraisal.

REPORT of the CLERK-TREASURER: The following items were distributed for council member review and possible action: A miscellaneous appropriation transfer list, as batched on September 10, 2013; a "Monthly Financial Statement, All Funds, for the Month Ended August 31, 2013—Reconciled"; and an "Appropriations Report for the Month Ended August 31, 2013.

Mr. Eastes met on August 29, 2013 with Mr. George Hilton of the DLGF (Department of Local Government Finance) regarding Leo-Cedarville's proposed 2014 budget, as entered within Gateway. An appropriation reduction resolution will need to be submitted in a timely fashion within Gateway in support of the current proposed budget.

A deposit of \$36,405.61 has been receipted into the Riverside Gardens Construction Fund as a result of the Land & Water Conservation Fund Grant for Riverside Gardens Park, Grant No. 18-00577. Additional matching grant receipts will be deposited as processed by the Indiana

Department of Natural Resources. A resolution draft is to be prepared by Mr. Proctor that will appropriate an additional \$199,550 to Account No. 443002451, RGC—Plan Expenditures, as recommended within the minutes of August 27, 2013.

Mr. Kyle Elliott, of Stewart, Brimmer, Peters & Company of Fort Wayne, Indiana has solicited the town regarding the town's current insurance program which renews October 14, 2013.

- **2013 “Appropriation Reduction Resolution” draft:** After a brief discussion, Council reached consensus to table action on the “Appropriation Reduction Resolution” for 2013 until Council meets again on September 24, 2013.

VOUCHERS APPROVED BY COUNCIL SIGNATURES:

- September 10, 2013 line-item form totaling \$48,927.26.

Summary: The total amount of all vouchers approved by Council was \$48,927.26.

Regular Session: Council will meet in regular session at 7:00 PM at the Town Hall of Leo-Cedarville on September 24 and October 8, 2013.

MOTION TO ADJORN: Mr. Richards moved to adjourn the meeting and Mr. Steffens provided a second to the motion, which passed by unanimous voice vote.

APPROVE:

ATTEST:

JOHN CLENDENEN, Council President

JOHN EASTES, Clerk-Treasurer